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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 UNITED STATES OF AMERICA,

Case No. 2:16-cr-00046-GMN-PAL

8 Plaintiff,

ORDER

9 v.

(Mot for Timely Production– ECF No. 749)

10 STEVEN STEWART,

11 Defendant.

12 Before the court is Defendant Steven Stewart's ("Stewart") Memorandum in Support of
13 Defendant's Motion for Timely Production of Giglio Material (ECF No. 749) which was referred
14 to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(A) and LR IB 1-3. The court has reviewed
15 the motion and Joinders of Dave Bundy, McGuire, Mel Bundy, Santilli, O'Shaugnessy, Payne,
16 Ryan Bundy and Ammon Bundy (ECF Nos. 769, 793, 813, 815, 819, 830, 831, 832, 840), the
17 government's Response (ECF No. 929), and Stewart's Reply (ECF No. 943).

18 **BACKGROUND**

19 Stewart is charged in a superseding indictment returned March 2, 2016, with:

- 20 • Count One – Conspiracy to Commit an Offense Against the United States in violation of
21 18 U.S.C. § 371. This charge arises from conduct that allegedly occurred sometime
22 between March of 2014 and March of 2016.
- 23 • Count Two – Conspiracy to Impede or Injure a Federal Officer in violation of 18 U.S.C.
24 § 372. This charge arises from conduct that allegedly occurred sometime between March
25 of 2014 and March of 2016.
- 26 • Count Three – Use and Carry of a Firearm in Relation to a Crime of Violence in violation
27 of 18 U.S.C. § 924(c) and (2). This charge arises from conduct that allegedly occurred
28 sometime between March of 2014 and March of 2016.
- Count Five - Assault on a Federal Officer in violation of 18 U.S.C. § 111(a)(1), (b) and (2).
This charge arises from conduct that allegedly occurred on April 12, 2014.

- 1 • Count Six - Use and Carry of a Firearm in Relation to a Crime of Violence in violation of
2 18 U.S.C. § 924(c) and (2). This charge arises from conduct that allegedly occurred on
3 April 12, 2014.
- 4 • Count Eight - Threatening a Federal Law Enforcement Officer in violation of 18 U.S.C.
5 15(a)(1)(B) and (2). This charge arises from conduct that allegedly occurred on April 12,
6 2014.
- 7 • Count Nine – Use and Carry of a Firearm in Relation to a Crime of Violence in violation
8 of 18 U.S.C. § 924(c) and (2). This charge arises from conduct that allegedly occurred on
9 April 12, 2014.
- 10 • Count Twelve – Obstruction of the Due Administration of Justice in violation of 18 U.S.C.
11 § 1503 and § 2. This charge arises from conduct that allegedly occurred on April 12, 2014.
- 12 • Count Fourteen - Interference with Interstate Commerce by Extortion in violation of 18
13 U.S.C. § 1951 and § 2. This charge arises from conduct that allegedly on April 12, 2014.
- 14 • Count Fifteen – Use and Carry of a Firearm in Relation to a Crime of Violence in violation
15 of 18 U.S.C. § 924(c) and (2). This charge arises from conduct that allegedly occurred on
16 April 12, 2014.
- 17 • Count Sixteen - Interstate Travel in Aid of Extortion in violation of 18 U.S.C. § 1952 and
18 § 2. This charge arises from conduct that allegedly occurred sometime between April 5,
19 2014 and April 12, 2016.


20 In the current motion, counsel for Stewart asserts that he sought to confirm with the
21 government it would produce *Giglio* and Jencks materials prior to trial before filing this motion in
22 an effort to comply with LCR 16-1(c). The government responded indicating it would produce
23 Jencks material prior to trial, but was silent on the *Giglio* material. Therefore, in an abundance of
24 caution, this motion was filed. It requests that the government be ordered to produce all *Giglio*
25 material as it becomes known to the prosecution, but not later than 30 days prior to trial. The
26 motion argues that the government has an affirmative obligation under the due process clause to
27 disclose all evidence favorable to him including information about an adverse witness' bias and
28 credibility in preparation for cross examination. The government has an affirmative duty to
disclose all evidence favorable to the defendant which is "material either to guilt or punishment."
The government has an obligation under *Brady v. Maryland*, 373 U.S. 83 (1963), to produce not

1 only exculpatory evidence, but also impeachment information regarding government witnesses.
2 The prosecution is in the best position to know of the evidence available and witnesses to be called,
3 and therefore has a duty to exercise due diligence in determining the existence of evidence
4 favorable to the defense. If there is any doubt that the evidence should be disclosed, the
5 government has an obligation to produce the material for an in-camera review by the court.
6 Accordingly, to protect Stewart's Constitutional rights, to afford him a meaningful opportunity to
7 contest the pending charges, prepare for cross-examination of the government's witnesses, and
8 effectively mount his defense, Stewart requests that the government be ordered to disclose all
9 *Giglio* material as it becomes known, but not later than 30 days prior to trial.

10 The government's response acknowledges its obligation to turn over all material
11 information that casts doubt on a government's witness' credibility under *Giglio v. United States*.
12 The government also acknowledges its obligation to disclose the information at a time when it
13 would be of value to the accused which is generally before trial. However, Stewart seeks an order
14 from the court imposing a set deadline for production of *Giglio* material to the defendants,
15 apparently based on the government's expressed intent to produce Jencks Act material earlier than
16 is required. The government points out that the Jencks Act does not mandate pretrial disclosure,
17 but requires that the government, on motion by the defendant, to produce any statement of the
18 witness in the possession of the government that relates to the subject matter testified to by the
19 witness on direct examination.

20 The court's case management order recognizes that the government has no pretrial
21 disclosure obligation regarding Jencks material, and the decline to impose such a deadline. The
22 court should similarly defer to the well-settled legal requirements dictating disclosure of *Giglio*
23 materials and allow the government to comply with its disclosure obligations of exculpatory or
24 impeachment information prior to trial as required by law without imposing a set pretrial deadline.
25 Imposing a deadline for *Giglio* material production is not only unnecessary, but potentially
26 interferes with the government's deadlines under the Jencks Act. Citing *United States v. Alvarez*,
27 358 F.3d 1194, 1211 (9th Cir. 2004), the government notes that when the defense seeks
28 information that qualifies as both Jencks Act and *Brady* material, the Jencks Act standards control.

1. Stewart's Memorandum in Support of Defendant's Motion for Timely Production of *Giglio* Material (ECF No. 749) is **GRANTED** to the extent the government shall produce non-Jencks *Giglio* material no later than 30 days before trial and **DENIED** in all other respects.
2. The requests for Joinder (ECF Nos. 769, 793, 813, 815, 819, 830, 831, 832, 840) are **GRANTED**.


PEGGY A. LEEN
UNITED STATES MAGISTRATE JUDGE